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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, AND LOCAL 759 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, SYSTEM COUNCIL U-4,
Petitioners,

v.

SALLY HECHLER,
Respondent.

On a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF FOR PETITIONERS

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QUESTIONS PRESENTED

A. Does § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, under the Supreme Court's decision in *Allis-Chalmers Corp. v. Lueck*, —— U.S. ——, 53 L.W. 4463 (April 16, 1985), preempt a state tort law from defining the legal consequences of entering into a duty by virtue of a collective bargaining agreement?

B. Does the federal duty of fair representation preempt state law from imposing additional duties on an exclusive bargaining representative with respect to the manner in which a union performs its functions as bargaining representative?

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 722 F.2d 788 and is reprinted as Appendix B to the petition for the writ of certiorari. The opinion of the United States District Court for the Southern District of Florida is unreported and is reprinted as Appendix A to the petition.

JURISDICTION

The opinion and judgment of the Court of Appeals were issued on September 30, 1985. A timely petition for rehearing was denied on November 14, 1985. A timely petition for a writ of certiorari was filed on February

12, 1986. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, provides in pertinent part as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

At all times relevant herein, respondent Sally Hechler was employed by Florida Power and Light Company ("Florida Power" or "the Company") as an electrical apprentice. Petitioners International Brotherhood of Electrical Workers and its Local 759 (collectively referred to as "the Union") are the exclusive bargaining representatives for the bargaining unit in which respondent was employed.

Some time prior to January 11, 1982, respondent was assigned by Florida Power to work at an electrical substation. Under the terms of the collective bargaining agreement between the Company and the Union, the Company had the sole authority, pursuant to the management rights provision of the agreement, to "assign and reassign" employees. J.A. 9. Under that contract the Union had no role in making assignments.

On January 11, 1982, respondent was injured in the course of her employment when she came into contact with highly energized components at the electrical substation to which she had been assigned by the Company.

Two years later, respondent commenced this action against the Union for damages arising out of the occupational injury she had suffered.

Respondent's complaint alleged that "pursuant to contracts" between the Union and the Company, "to which contracts . . . the [respondent] was a third-party beneficiary," the Union "owed the [respondent] the duty to assure that the [respondent] was provided safety in the work place . . . and further, the [respondent] would not be required or allowed to take undue risks in the performance of her duties . . . or to work in an area which was not safe as commensurate with her training and experience." J.A. 4. The complaint further alleged that the union "breached [this alleged contractual] duty and w[as] consequently negligent" by, *inter alia*, "allowing [respondent] to be assigned to work in and allowing her to actually work in" an electrical substation and by "failing to provide her with or ascertaining that she had the necessary training, experience, background and education to work in such a dangerous environment." J.A. 4-5.[1] The complaint sought damages from the Union.

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[1] Respondent's statement of the manner in which the Union allegedly breached its contractual duty is as follows:

> 6. Your Plaintiff, SALLY HECHLER, did not have the necessary nor required training, background, education or experience to work in such an inherently dangerous work place as an electrical substation, but, despite this, the Defendants, and each of them, breached their duty and were consequently negligent to your Plaintiff, SALLY HECHLER, by allowing her to be assigned to work in and allowing her to actually work in such a dangerous location and environment and by failing to provide her with or ascertaining that she had the necessary training, experience, background and education to work in such a dangerous environment, or ascertaining prior to her employer, Florida Power, placing her in such a dangerous environment, that she received the necessary education, background, training and experience. Further, the Defendants were further negligent when they did not take any actions to protect your Plaintiff, SALLY HECHLER, from the

Relying on the fact that "[t]he complaint alleges that the defendants breached a duty . . . aris[ing] solely from the alleged collective bargaining agreement between defendants and Florida Power," R. 3, the Union removed respondent's action from state court, where respondent had filed her suit, to federal court; respondent did not object to the removal at the time it was effected. The Union thereafter moved to dismiss the complaint on the ground that respondent's claim necessarily arose under federal law and was untimely under the applicable federal limitations period. Respondent resisted this motion on the ground that she had stated a valid state-law claim, and respondent, for the first time, sought to have the case remanded to state court.

In ruling on the motion to dismiss and the cross-motion to remand, the district court began by noting that "[s]ignificantly, the duty allegedly owed to plaintiff flows from the collective bargaining agreement." Pet. App. 3a. The district court cited in particular to several provisions of the agreement, which that court appended to its opinion. The first of those provisions, entitled "SAFETY," provides that

> The safety of the employees is a matter of paramount importance, shall receive first consideration, and no employee shall be allowed or required to take any undue risk in the performance of his duties which he or his Foreman or Supervisor consider unsafe to himself or to his fellow workers. Supervisors and foremen will be held strictly responsible for the enforcement of safe working rules. [J.A. 13-14].

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risks inherent in such an inherently dangerous environment by providing and/or enforcing safety rules, regulations and requirements which would preclude such persons with inadequate and insufficient background, training, education and experience, such as the Plaintiff, SALLY HECHLER, from being placed in such an inherently dangerous working environment, such as an electrical substation. [J.A. 4-5]

This provision goes on to establish a labor-management "Joint Safety Committee" which is "responsible for developing and recommending an effective safety program . . . including changes or additions to present safety rules"; the agreement in terms also limits the committee by providing that it has no authority to "involve itself in disciplinary action" nor to develop "work rules governing . . . conditions of employment." *Id.* at 14.

The second provision to which the district court cited is a side-agreement entitled "The Manner An Electrical Apprentice Will Work" which states:

> It is recognized that an Electrical Apprentice is in training under Journeymen to become a qualified Journeyman. It is also recognized that as he progresses in his apprenticeship, he becomes qualified to perform productive work, and will be expected to perform all the duties of a Journeyman which he has become qualified to do. It is not the intention of the Company to use an Apprentice on any type of work which the Apprentice has not become qualified to perform through experience and training. In this regard, the Company will not require an Apprentice to work on, climb through or above energized conductors carrying more than 500 volts during his first year of apprenticeship. [*Id.* at 17.]

The district court concluded that because "the duty allegedly owed to plaintiff flows from [these provisions of] the collective bargaining agreement," respondent's suit is necessarily "based on federal . . . law" and was untimely filed under the applicable federal limitations period. Pet. App. 2a-3a. The district court explained that to plead a state-law claim, respondent would have to allege "negligent [union] activity [which] was unrelated to the collective bargaining agreement or beyond the scope of the employee-union fiduciary relationship"; the district court concluded that respondent "has not satisfied this pleading requirement." Pet. App. 4a.

On appeal, the Eleventh Circuit reversed. That court concluded that although "a remedy may have been avail-

able to" respondent under § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, and although respondent's "state action may in part involve the same relief available under § 301," Pet. App. 18a-19a, nonetheless respondent's "complaint on its face states a common law negligence claim that may be cognizable in state court and is not preempted by the federal labor laws." Pet. App. 14a. The court of appeals directed the district court "to remand the case to the state court." *Id.*[2]

On May 19, 1986, this Court issued a writ of certiorari to review the Eleventh Circuit's decision.

ARGUMENT

Introduction and Summary

Reduced to its essentials, respondent's complaint in this case is that she was assigned by her employer to a work

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[2] Although the court of appeals' ultimate conclusion was that the federal courts lacked jurisdiction over respondent's claim, that court properly understood that under *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968), federal jurisdiction would exist if as the Union contends, respondent's claim were preempted by, and fell within § 301. Thus the appellate court properly addressed the merits of that preemption issue.

The court below erred, however, in holding that its determination that respondent's claim was not preempted established a lack of federal jurisdiction and necessitated a remand. For in all events it is clear that "a necessary element" of respondent's claim for negligent performance of obligations under a collective bargaining agreement is a "substantial . . . question of federal law," *viz.*, the meaning of that agreement. *Franchise Tax Board v. Laborers Vacation Trust*, 463 U.S. 1, 13 (1983). And even if, *arguendo*, the Court were to conclude that the federal elements implicated by respondent's claim did not preclude the application of state law, at the very least those elements are sufficient to support federal jurisdiction under the rule of *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921). *See also Merrell Dow Pharmaceutical's Inc. v. Thompson*, —— U.S. ——, 54 L.W. 5088 (July 7, 1986).

Thus, regardless of how the preemption question before this Court is resolved it is clear that this case was properly removed to federal court and should not be remanded.

station that was too dangerous for her, given her level of experience and training. The Union did not make that job assignment, nor did the Union have any say over the assignment. Nevertheless, respondent attempts to hold the Union liable for the injuries she suffered in the course of her employment.

Until a few years ago, such an attempt would have been entirely unheard of. In recent years, however, as injured workers (and their counsel) have sought to supplement the awards obtained from employers through state workers compensation laws, efforts have been made with increasing frequency to find "third parties" on whom to impose liability. In organized workplaces, labor unions have proved to be inviting targets for suits of this type.[3]

The problem faced by would-be plaintiffs in mounting such suits is that under the common law it is the *employer* who owes his employees a duty to provide a safe workplace. *Prosser & Keaton on Torts* 569 (5th ed.

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[3] *See, e.g., Michigan Mutual Ins. Co. v. Steelworkers*, 774 F.2d 104 (6th Cir. 1985); *Condon v. Steelworkers Local 2944*, 683 F.2d 590 (1st Cir. 1982); *Bryant v. Mine Workers*, 467 F.2d 1 (6th Cir. 1972), *cert. denied*, 410 U.S. 930 (1973); *Pockalny v. Elwell Parker Elec. Co.*, 608 F. Supp. 570 (W.D.N.Y. 1985); *Presiler v. Steelworkers*, No. N-83-159 (D. Conn., Feb. 24, 1984); *Burgess v. Allendale Mut. Ins. Co.*, 111 LRRM 2997 (S.D. Ga. 1982); *Mahoney v. Chicago Pneumatic Tool Co.*, 111 LRRM 2839 (W.D. Mich. 1982); *Wilson v. United Mine Workers*, Civ. No. 78-G-1362-S (N.D. Ala., June 3, 1980); *Globig v. Johns-Manville Corp.*, 486 F. Supp. 735 (E.D. Wis. 1980); *Hartsfield v. Seafarers Int'l. Union*, 427 F. Supp. 264 (S.D. Ala. 1977); *House v. Mine Safety Applicance Co.*, 417 F. Supp. 939 (D. Idaho 1976); *Brooks v. New Jersey Manufacturers Ins. Co.*, 170 N.J. Super. 20, 405 A.2d 466 (1979); *Helton v. Hake*, 564 S.W.2d 313 (Mo. App. 1978), *cert. denied*, 439 U.S. 959; *Dunbar v. Steelworkers*, 602 P.2d 21 (Idaho 1979), *cert. denied*, 446 U.S. 983 (1980); *Carollo v. Forty-Eight Insulation, Inc.*, 252 Pa. Super. 422, 381 A.2d 990 (1977); *Gerace v. Johns-Manville Corp.*, 95 LRRM 3282 (Pa. Ct. C.P. 1977); *Higley v. Disston*, 92 LRRM 2443 (Wash. Super. 1976); *McColgan v. Mine Workers*, 124 Ill. App. 3d 825, 464 N.E.2d 1166 (1984), *cert. denied*, —— U.S. ——, 105 S.Ct. 1752 (1985).

1984). No third party owes such an independent duty as a matter of law, nor is any third party under an independent legal duty to police the performance of an employer in meeting his responsibility. That being so, plaintiffs have turned to provisions of collective bargaining agreements that afford unions a role in monitoring an employer's safety-related performance, and have argued that by conferring certain rights or privileges on unions, these provisions give rise to legal duties under state law which duties provide a basis for holding unions liable for occupational injuries.

Until the decision below in the instant case, every federal court and a number of state courts[4] considering a suit of this type had rejected the attempt to use state negligence law to hold a union liable for an injury an employee suffered in the course of his employment. These courts have reasoned, in essence, that *federal law*, and not state law, governs a union's liability for the manner in which the union enforces (or fails to enforce) its collective bargaining agreements or for the union's performance as exclusive representative. The court below reached the contrary conclusion.

As we proceed to show, in so doing, the court of appeals erred. Our argument proceeds as follows.

In Part I we show that respondent's claim is preempted by, and constitutes a claim under, § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185. Under this Court's decisions, the test of whether a state-law claim is preempted by § 301 is whether that claim is "substantially dependent upon an analysis of the terms of a [collective bargaining] agreement," or whether, instead, the claim asserts "rights . . . independent of any

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[4] *See, Brooks v. New Jersey Manufacturers Inc., supra* n.3; *Carollo v. Forty-Eight Insulating, Inc., supra* n.3; *Gerace v. Johns-Manville Corp., supra* n.3; *Higley v. Disston, supra* n.3; *McColgan v. Mineworkers, supra* n.3.

right established by contract." *Allis-Chalmers Corp. v. Lueck*, —— U.S. ——, 53 L.W. 4463, 4467-68 (April 16, 1985). Measured against that test, respondent's claim clearly falls within the ambit of § 301.

Under Florida law, unions do not have any independent legal obligation to assure that employers make only safe job assignments. The gravamen of respondent's complaint, therefore, is that "*pursuant to contracts and agreements*" with Florida Power the Union assumed such a duty. P. 3, *supra*. As respondent concedes, "the contract in question admittedly defines the nature and scope of the Unions' duties." Resp. Br. in Op. at 8-9. Thus here, as in *Lueck*, "questions of contract interpretation . . . underlie any finding of tort liability." 53 L.W. at 4467. For that reason, respondent's claim is preempted by § 301.

Even if respondent's claim were not so clearly based upon the collective bargaining agreement—even if, for example, Florida law purported to impose upon unions who are party to collective bargaining agreements the legal obligation to police job assignments regardless of what the Union agrees to by contract—a complaint alleging a breach of such a duty still would be preempted by § 301. *Lueck* teaches that "the policies that animate § 301 . . . require that the relationships created by [a collective bargaining] agreement be decided by application of an evolving federal common law grounded in national labor policy." 53 L.W. at 4465. In concrete terms, this means that federal law must decide what legal duties, if any, are to be superimposed on (*viz.*, implied in law from) a collective bargaining agreement. And that is why *Lueck* holds that suits alleging violations of state-law rights are preempted by § 301 if those rights "do not exist independently of private agreement." 53 L.W. at 4465.

Because respondent's claim falls under § 301, it necessarily follows that this Court must either remand the

instant case to the court of appeals to allow that court to decide, applying federal law principles, whether the case was properly dismissed by the district court, or alternatively, this Court must decide that question. In Part II, we show that a remand is not necessary and would entail a needless expenditure of judicial resources because the particular § 301 claim respondent has pled is governed by the law of fair representation and is untimely under that law.

At bottom, as we noted at the outset, respondent's complaint is that she was assigned by Florida Power to a workplace in which it was too dangerous for her to work, given her background, training, and experience. The most that the Union could have done with respect to that assignment was grieve it under the grievance-arbitration procedures of the collective bargaining agreement. Respondent's claim, then, necessarily is, as she stated to the district court, that she was injured as a *direct result of the [union's] failure to enforce provisions contained in the collective bargaining agreement.*" R. 100-01, emphasis added.

The duty of fair representation is the source of law that governs such a claim. This Court has taken great pains to shape fair-representation law in a manner that balances competing interests and furthers the national labor policy. The balance could be easily upset if the courts were free to apply inconsistent rules of law, either in the name of creating a federal common law of implied contractual obligations or in the name of enforcing state negligence law. For that reason, *Vaca v. Sipes*, 386 U.S. 171 (1967), squarely holds that the federal duty of fair representation is the sole source of law for the courts to apply in judging a union's conduct in performing its functions as exclusive representative, including its functions in enforcing collective bargaining agreements.

Applying the fair-representation doctrine, the district court properly dismissed respondent's complaint. Under *DelCostello v. Teamsters*, 462 U.S. 151 (1983), the appli-

cable statute of limitations for fair representation claims is the six-month period contained in § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b). Respondent's complaint, which was filed more than two years after respondent was injured, thus is untimely under § 10(b).

I. RESPONDENT'S STATE LAW CLAIM IS PREEMPTED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT OF 1947

A. By its terms, § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, creates federal jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization representing employees . . ." In the seminal case of *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 445, 446 (1957), this Court concluded that § 301 "expresses a federal policy that federal courts should enforce these agreements," and that "the substantive law to apply is federal law, which the courts must fashion from the policy of our national labor laws." *Lincoln Mills* thus "understood § 301 as a congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts." *Allis-Chalmers Corp. v. Lueck*, —— U.S. ——, 53 L.W. 4463, 4465 (April 16, 1985).

In *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95, 107 (1962), the Court expanded on the rule of *Lincoln Mills* by holding that "[t]he dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute [so that] issues raised in suits of a kind covered by § 301 [are] decided according to the precepts of federal labor policy." The Court explained:

> The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon

> both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract. Once the collective bargain was made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation . . . [*Id.* at 103-104.]

Lucas Flour thus teaches that "in enacting § 301 Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules." *Id.* at 104.

In subsequent cases, the Court, in elaborating on the holding of *Lucas Flour*, has made it clear that the "preemptive force of § 301 is so powerful as to displace entirely any state cause of action . . ." *Franchise Tax Board v. Laborers Vacation Trust, supra*, 463 U.S. at 23. "[A]ny complaint that comes within the scope of the federal cause of action"—even though "pleaded [as] an adequate claim for relief under . . . state law" and seeking "a remedy available *only* under state law"—nonetheless is "purely a creature of federal law" and is to be treated as a § 301 claim. *Id.* at 23-24. The question in this case, then, is whether the claim alleged in respondent's complaint falls within "the scope of the federal cause of action."

B. Until this Court's decision in *Lueck*, the Court had not had occasion to define "the area covered" by § 301, *Lucas Flour, supra*, 369 U.S. at 103, or "the scope of the federal cause of action," *Franchise Tax Board, supra*, 463 U.S. at 24, because all prior § 301 cases had involved nothing more than suits to "enforc[e] the contract," *Lucas Flour, supra*, 369 U.S. at 104. In *Lueck*, however, the Court was required to decide "whether § 301 . . . preempts a

state law tort action for bad-faith delay in making disability-benefit payments due under a collective-bargaining agreement." 53 L.W. at 4464. In resolving that issue, the *Lueck* Court offered substantial guidance as to the reach of § 301; *Lueck* thus merits detailed review here.

Lueck arose out of a collective bargaining agreement which obligated the employer to provide disability benefits to bargaining-unit employees. The plaintiff, an (allegedly) disabled employee who had submitted a claim for benefits under the agreement, brought a tort suit against the employer in the Wisconsin state courts. The theory of the complaint was that because the employer in the collective bargaining agreement had undertaken to provide disability benefits to his employees, Wisconsin law imposed on the employer, in common with benefit-provides generally, a duty to exercise good faith in processing claims for benefits. The complaint alleged that the employer had breached this duty by periodically, without justification, withholding benefits from the plaintiff for varying periods of time. This Court held that the trial court had properly dismissed that complaint because "Congress intended § 301 to pre-empt this kind of derivative tort claim." 53 L.W. at 4467.

The Court began by noting that "a suit in state court alleging a violation of a provision of a labor contract must be brought under § 301 and be resolved by reference to federal law." *Id.* at 4465. The Court went on to observe that "[i]f the policies that animate § 301 are to be given their proper range . . . the pre-emptive effect of § 301 must extend beyond suits alleging contract violations" because those § 301 policies "require that 'the relationships created by [a collective bargaining] agreement' be defined by application of 'an evolving federal common law grounded in national labor policy.'" *Id.* Thus the Court concluded that *any* suit in which "the relationships created by a collective bargaining agreement" are at issue must be resolved by federal law

> *whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort.* Any other result would elevate form over substance and allow parties to evade the requirement of § 301 by re-labeling their contract claims as claims for tortious breach of contract. [*Id.*, emphasis added.]

Based on this analysis, the Court in *Lueck* took the following approach to the particular claim presented there:

> Our analysis must focus . . . on whether the Wisconsin tort action for breach of the duty of good faith as applied here confers non-negotiable state law rights on employers or employees independent of any right established by contract, or, instead, whether evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract. If the state tort law purports to define the meaning of the contract relationship, that law is pre-empted. [*Id.* at 4466.]

And the Court stated its holding as follows:

> We . . . hold that when resolution of a state law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim or dismissed as pre-empted by federal labor-contract law. [*Id.* at 4468.]

Applying that rule to the claim in *Lueck*, the Court concluded that because "[q]uestions of good faith performance . . . necessarily are related to the application of terms of the contractual agreement," *id.* at 4467 n.11, "the tort is not sufficiently independent of questions of contract interpretation to avoid the pre-emptive effect of § 301," *id.* at 4467 n.13. The Court explained:

> [A]ny attempt to assess liability here inevitably will involve contract interpretation. The parties' agreement as to the manner in which a benefit claim would be handled will necessarily be relevant to any allega-

> tion that the claim was handled in a dilatory manner. Similarly, the question whether Allis-Chalmers required Lueck to be examined by an inordinate number of physicians depends in part upon the parties' understanding concerning the medical evidence required to support a benefit claim. These questions of contract interpretation, therefore, underlie any finding of tort liability . . . Congress has mandated that federal law govern the meaning given contract terms. Since the state tort purports to give life to these terms in a different environment, it is preempted. [*Id.* at 4467.]

C. The instant case falls squarely within the *Lueck* rule and respondent's state law tort claim is thus preempted by § 301. To understand why that is so requires a review of respondent's claim and the body of state law respondent seeks to invoke.

Under Florida law, as under the common law generally, *see* p. 8, *supra*, "[a]n employer owes his employees the duty to furnish a reasonably safe place in which to work, and must use ordinary care and diligence to keep it safe." 2 Florida Jur. 2d, *Agency and Employment*, § 154 & cases cited nn.44-45 (1977). Encompassed within that duty is the obligation to "consider the age, mentality and lack of experience and capacity of [the employer's] employees and fully instruct them as to the dangers incident to the particular employment for which they are engaged." *Id.* § 148 & cases cited n.18. This duty to provide a safe workplace is non-delegable, as under Forida law "[o]ne on whom the law devolves a duty cannot shift it to another." 8 Fla. Jur. 2d, *Negligence*, § 11 and cases citd nn. 56-57 (1982). And no other party has an independent obligation to police the employer's performance of his legal duty. *Cf., e.g., Vorndran v. Wright*, 367 So.2d 1071 (Fla. App. 1979).

At the same time, under Florida law—as under the common law generally, *see Prosser & Keeton, supra*, at 656-57—the general rule is that "for an injury occasioned by want of due care and skill in doing what

one has promised to do, an action may be maintained." *Banfield v. Addington*, 104 Fla. 661, 140 So. 893, 896 (1932). That "action may [be] for the breach of the contract"—as the duty to exercise due care is implied as part of the contractual obligation—"or for the positive tort committed by the violation of a duty arising out of the assumption of the contractual relationship." *Parrish v. Clark*, 107 Fla. 598, 145 So. 848, 850 (1933). It is thus a "long-established principle [in Florida] that injuries caused by the allegedly negligent performance of a contractual duty may be redressed through a tort action." *Safeco Title Ins. Co. v. Reynolds*, 452 So.2d 45 (Fla. App. 1984).[5]

It is this latter rule which respondent here seeks to invoke. As previously noted, respondent's complaint alleges that "*pursuant to contracts and agreements* entered into by and between the [Union] and the said Florida Power to which contracts and agreements the [respondent] was a third-party beneficiary, the [Union] owed the [respondent] the duty to assure that the [respondent] was provided safety in her workplace." P. 3, *supra*. Thus, as respondent acknowledged in her brief in opposition to the petition for a writ of certiorari, her "claim is that the Unions were negligent *in the performance of a contractual obligation*." Resp. Br. in Opp. at 4 (emphasis added). And in making this claim, respondent concedes that "the contract in question admittedly defines the nature and scope of the Union's duties." *Id.* at 8-9. Because that is so, it necessarily follows, for two independent reasons, that respondent's claim falls within the "area covered by" § 301 as that area is delimited in *Lueck*.

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[5] *See also, e.g., Holbrook v. Sarasota*, 58 So. 2d 862, 864 (Fla. 1952) (a suit for negligence by hospital personnel properly brought as a contract suit "[e]ven though it may have been proper . . . to have brought a tort action"); *Colhoun v. Greyhound Lines, Inc.*, 265 So. 2d 18, 21 (Fla. 1972) (same with respect to negligence of a common carrier"); *Safeco Title Ins. Co. v. Reynolds*, 452 So. 2d 45 (Fla. App. 1984); 38 Fla. Jur. 2d, *Negligence* § 17 (1977).

1. In the instant case, as in *Lueck*, "any attempt to assess liability . . . inevitably will involve contract interpretation." 53 L.W. at 4467. Inasmuch as unions do not have any independent legal obligation to assure that employers make safe job assignments, the allegations in the complaint that the Union "fail[ed] to provide [respondent] with or ascertain[] that she had the necessary training, experience, background and education to work in such a dangerous environment . . . prior to her employer, Florida Power, placing her in such a dangerous environment," and that the Union "did not . . . provid[e] and or enforc[e] safety rules . . . which would preclude such persons with inadequate and insufficient background, training, education, and experience . . . from being placed in an inherently dangerous working environment," pp. 3-4 & n.1, *supra*, are not, in and of themselves, of any legal significance. Standing alone those allegations would carry no more weight than a claim that an innocent bystander did not intermeddle in the Company's affairs.

The allegations in respondent's complaint assume significance if—*but only if*—the Union had assumed a duty to act in the particular respects in which the complaint claims the Union failed to act; only in that event would the Union's alleged inaction be transformed into an actionable wrong. Respondent's complaint alleges that the Union did assume such a duty "*pursuant to contracts*" between the Union and Florida Power to which contracts respondent "was a thirty-party beneficiary." In particular, the theory of the complaint is that under the collective bargaining agreement the Union "owed the [respondent] the duty to assure that the [respondent] was provided safety in her workplace" and that this general obligation carried with it a more specific, contractual duty to police the Company's assignment of employees to dangerous locations.

It follows that in order to adjudicate respondent's negligence claim, it would be necessary to decide first whether

the collective bargaining agreement, in fact, places upon the Union "the duty to assure that the [respondent] was provided safety in her workplace," and, if so, second, to determine the nature and scope of that contractual duty, *viz.*, whether (and to what extent) the duty extends to matters of job assignments. Thus what the Court said in *Lueck* applies here with full force: "questions of contract interpretation . . . underlie any finding of tort liability." 53 L.W. at 4467.[6] And as *Lueck* explains, "[t]he interests in interpretive uniformity and predictability . . . require . . . uniform federal interpretation . . . whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort." *Id.* at 4466. It follows that respondent's claim falls squarely within the scope of § 301.[7]

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[6] The court below thought that this case was different from *Lueck* because in that case "the tort was essentially a product of the contract itself—without the contract no tort claim could have existed." Pet. App. 21a. But as shown in text—and as respondent's own description of her claim as one for "negligen[ce] in the performance of a contractual obligation," Resp. Br. in Opp. at 4, makes clear—precisely the same is true here: "without the contract no tort claim could have existed."

[7] Perhaps the clearest proof that respondent's claim is, in reality, a § 301 claim is the fact that under Florida law plaintiff could have framed her claim as a contractual claim for breach of the duty of due care implied in the contract. *See* p. 16, *supra*. Had respondent chosen to do so, there would be no doubt that such a claim would be preempted by § 301; that much is settled by *Lucas Flour* and *Avco Corp. v. Aero Lodge No. 735*, *supra*.

That plaintiff chose to denominate her claim as one sounding in tort—even though the substance of the claim is identical to the putative contractual claim—cannot alter the conclusion. As the Court stated in *Lueck*, to allow the tort-contract dichotomy to define the reach of § 301 "would elevate form over substance and allow parties to evade the requirements of § 301 by re-labeling their contract claims as claims for tortious breach of contract." 53 L.W. at 4465.

2. There is a second and independent reason why respondent's claim falls within the ambit of § 301. Even if, contrary to what we have just shown, resolution of respondent's state-law claim did not turn on a determination as to the nature and scope of the duties provided for in the collective bargaining agreement—even if, for example, Florida law purported to impose upon *unions who are party to collective bargaining agreements* the legal obligation to police job assignments regardless of what the Union agrees to by contract—a complaint alleging a breach of such a duty still would be preempted by § 301. For *Lueck* teaches that suits alleging violations of state-law rights are preempted by § 301 if those rights "do not exist independently of private agreements." 53 L.W. at 4465.

The reason for this rule is made clear in *Lueck*. "[T]he policies that animate § 301 . . . require that '*the relationships created by* [*a collective bargaining*] *agreement*' be decided by application of 'an evolving federal common law grounded in national labor policy.'" 53 L.W. at 4465 (emphasis added). In concrete terms this means that federal law must decide what legal duties, if any, are to be superimposed on—or, to use the terminology of the law of contracts, to be implied in law from—a collective bargaining agreement, just as federal law resolves disputes as to what duties are expressly or impliedly agreed to in such a contract.[8] For, from the standpoint

[8] Not surprisingly, the question whether a particular duty is to be implied from a labor contract—either because the parties so intended or because the law so requires—arises commonly in actions to enforce such contracts and, in that context, is routinely answered by federal law. In *Lucas Flour*, for example, the ultimate issue for decision was whether, notwithstanding the absence of a no-strike clause in the collective bargaining agreement, the union had an implied duty not to strike over issues which were arbitrable. Similarly in *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212, 216 (1979), the question presented was whether a duty "to use all reasonable means to prevent and end [wildcat] strikes . . . is either (a) implied in law because the [collective bargaining]

of the contracting parties, duties implied in law, duties implied in fact, and duties expressly assumed have precisely the same effect: each defines what is required of the obligated party by *virtue of the contract* and thus defines the legal consequences to the parties of entering into the contractual relationship.

State rules implying duties from collective bargaining agreements—*viz.*, state rules that impose legal obligations on the parties to such contracts—thus constitute state regulation of "the relationship" created by the agreement no less than state rules that govern the interpretation of the words of the agreement. And if by operation of the state tort law of the various states, a particular collective bargaining agreement could yield differing legal duties under competing legal systems, the "disruptive influence upon both the negotiation and administration of collective agreements," *Lucas Flour*, *supra*, 369 U.S. at 103, that § 301 is intended to prevent would be felt with full force.[9]

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agreement contains an arbitration provision or (b) in any event is to be implied from the promise of the agreement that the parties . . . 'will maintain the integrity of the contract' ". And in *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 707-10 (1983), one of the issues posed was whether union officers had an "implicit" contractual duty to "take affirmative steps to end an unlawful work stoppage."

[9] Again, it is relevant to note that a suit to enforce an implied-in-law duty can equally be framed as one sounding in contract or one sounding in tort. As the Florida Supreme Court itself has recognized, "[a] contract includes not only the things written but also terms and matters which, though not actually expressed, are implied by law." *Sharp v. Williams*, 141 Fla. 1, 192 So. 476, 480 (1940). Furthermore, "what the law implies from the relation of the parties created by an express agreement is as much a part of the contract as that which is expressed," *McGill v. Cockrell*, 88 Fla. 54, 101 So. 199, 201 (1924); such implied duties "are as binding as the terms which are actually written or spoken," *Sharp v. Williams*, *supra*.

Where claims based on implied duties are framed as contractual claims, there is no doubt that they are covered by § 301. No differ-

It follows that respondent's claim falls within "the area covered" by § 301.

II. UNDER THE GOVERNING FEDERAL LAW, THE DISTRICT COURT PROPERLY DISMISSED RESPONDENT'S COMPLAINT

What we have just shown establishes that, as in *Lueck*, respondent's claim "must either be treated as a § 301 claim or dismissed as pre-empted by federal labor-contract law." 53 L.W. at 4468. The Eleventh Circuit thus erred in concluding that plaintiff's complaint "states a common law negligence claim that may be cognizable in state court and is not preempted by the federal labor laws." Pet. App. 14a. This case must therefore either be remanded to that court to decide, *applying federal law principles*, whether the case was properly dismissed by the district court or, alternatively, this Court must decide that issue.

There is, we believe, no reason for this Court to remand the case and thereby require yet an additional expenditure of judicial resources on this matter. As we proceed to show, respondent's particular § 301 claim rests on the manner in which the union performed its function, as respondent's bargaining representative, in enforcing the collective bargaining agreement. Because that is so, the federal law that applies here is the law of fair representation, under which law respondent's complaint is untimely.

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ent result should obtain in tort suits in which it is alleged that a legal duty imposed on parties to a collective agreement has been breached. *See Lueck*, 53 L.W. at 4465; *see also Prosser & Keaton supra*, 655, 5 ("The distinction between tort and contract liability, as between parties to a contract, has become an increasingly difficult distinction to make"; in both contract and tort "obligations of conduct are imposed by reason of the relation in which the parties stand toward one another").

A. Analysis begins with respondent's complaint. Reduced to its essentials, what the complaint alleges is that respondent was assigned to a workplace in which it was too dangerous for her to work, given her background, training and experience. The complaint acknowledges that this assignment was made by Florida Power and not by the Union. But the complaint faults the *Union* for: (a) "allowing" the employer to make the assignment; and (b) failing "prior to [respondent's] employer, Florida Power, placing her in such a dangerous environment" either to train respondent or to ascertain that she had received training. P. 3, *supra*.

There is no doubt, under the collective bargaining agreement between the Union and Florida Power (which is part of the record of this case), that the Union plays no role in making job assignments. Nothing in the agreement requires the Company to consult the Union with respect to assignments or to seek or secure Union approval. Nor does the agreement give the Union authority to block an assignment. To the contrary, the agreement expressly declares that the assignment and reassignment of employees is one of the prerogatives of management. P. 2, *supra*.

To the extent the contract limits the Company's assignment power, it is by obligating the Company to give "[t]he safety of the employees . . . first consideration," and by providing that the Company is not to require any employee "to take any undue risk in the performance of his duties." Pp. 4-5, *supra*. The responsibility for complying with these rules rests with management; the contract expressly states that "[*s*]*upervisors and foremen* will be held responsible for the enforcement of safe work rules." *Id.* (emphasis added). What the Union is empowered to do if it believes an assignment had been made that contravenes these (or other) provisions of the contract is to protest the assignment to the Company and ultimately to grieve over the assignment. And the col-

lective bargaining agreement establishes an elaborate grievance-arbitration procedure to resolve claims of "violation of the terms of th[e] Agreement." J.A. 10-13.

At bottom, then, as the district court recognized, respondent's claim that the Union "allow[ed]" her to be assigned to the electrical substation without adequate training is a challenge to the manner in which the Union, as respondent's exclusive representative, exercised (or failed to exercise) its prerogatives under the grievance procedure. In her brief to the district court, respondent so stated, summarizing her claim in these words:

> Plaintiff was severely injured and disfigured as a direct result of the [Union's] *failure to enforce provisions contained in the collective bargaining agreement* entered into between [the Union] and [respondent's] employer. [Memorandum of Law in Opposition to Defendant's Motion to Dismiss at 4-5, R. 100-01; emphasis added.]

And in her brief in opposition in this Court, respondent continues to fault the Union for its "failure to protect her individual safety in her work assignment." Resp. Br. in Opp. at 2 n.1.[10]

As we proceed to show, because respondent's claim is inextricably based on alleged acts or, more precisely, alleged omissions by the Union in "enforc[ing] provisions contained in the collective bargaining agreement," the district court properly held that the sole source of law governing that claim is the duty of fair representation, and *not* any other body of federal (or state) common law.

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[10] The court below read the complaint quite differently, asserting that "this complaint does not allege that the union failed to properly represent plaintiff in a claim against the employer," Pet. App. 28a; according to that court, the complaint concerns "a union's negligence in the training or assignment of one of its members," *id.* 27a. But as the quotations in text from respondent's brief to the district court makes clear, the appellate court misread the complaint and ignored the pertinent provisions of the collective bargaining agreement.

B. The duty of fair representation has been "implied under the scheme of the National Labor Relations Act," *DelCostello v. Teamsters*, 462 U.S. 151, 164 (1983), and the cause of action for breach of that duty likewise has been "judicially 'implied from the statute,'" *Electrical Workers v. Foust*, 442 U.S. 42, 47 (1978) *quoting Steele v. L.N.R. Co.*, 323 U.S. 192, 204 (1944). In *DelCostello* the Court traced the origins of, and reviewed the principles underlying, the duty:

> The duty of fair representation exists because it is the policy of the National Labor Relations Act to allow a single labor organization to represent collectively the interests of all employees within a unit, thereby depriving individuals in the unit of the ability to bargain individually or to select a minority union as their representative. In such a system, if individual employees are not to be deprived of all effective means of protecting their own interests, it must be the duty of the representative organization "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." [462 U.S. at 164 n.14.]

The fair representation duty thus is "equal in scope to [the union's] authority," *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 564 (1976), and serves to protect individuals "stripped of traditional forms of redress by the provisions of federal labor law," *Vaca v. Sipes*, 386 U.S. 171, 182 (1967).[11]

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[11] Given the origin and purposes of the duty of fair representation as described in text, respondent could not be more wrong in suggesting that her complaint "only peripherally implicated the central concern of the labor laws . . . because [the] complaint challenged not the general safety of the workplace . . . but only the Unions' failure to protect [respondent's] individual safety in work assignment—a matter 'between the union and the worker [that] does not implicate national labor policy.'" Resp. Br. in Opp. at 2 n.1. Contrary to respondent's contention, the national labor policy concerns not only "the relationship between an em-

Over a period of more than four decades, the Court has defined and delimited the substance of the duty an exclusive representative owes to those it represents in a manner that assures that representative a "wide range of reasonableness in serving the unit it represents," *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953), so as to enable the union to perform its core function of maximizing "benefits for the bargaining unit as a whole" by "balancing individual and collective interests." *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 742 (1981). The Court likewise has developed a set of ancillary rules to govern the enforcement of the duty of fair representation, rules that also have been carefully developed "to accommodate a balance of interests," *DelCostello, supra*, 462 U.S. at 169, by "afford[ing] individual employees redress for injuries caused by union misconduct without compromising the collective interests of union members in protecting limited funds," *Foust, supra*, 442 U.S. at 50. These rules concern, *e.g.*, the type of remedies available for breaches of the duty, *see Foust, supra*; the nature of the injuries for which unions can be held accountable, *see Bowen v. United States Postal Service*, 459 U.S. 212 (1983); and the limitations period for filing fair-representation claims, *see DelCostello, supra*. Together the rules comprising the fair representation doctrine seek to further "the overarching legislative goal [of] facilitat[ing] collective bargaining and . . .

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ployer and its employees collectively," *id.*, but also the relationship between the collective bargaining representative and the individual employee; indeed, the very means by which the labor laws address the "relationship between an employer and its employees collectively" is by structuring the union-*employee* relationship in such a way as to enable the union to bargain collectively on behalf of all employees in the bargaining unit. *See* 29 U.S.C. § 159. And the pressure point of the duty of fair representation is to regulate the union-employee relationship. Thus, the manner in which a union "protect[s] individual safety in work assignment" is very much a matter of federal concern, one that implicates the core policies of the duty of fair representation.

achiev[ing] industrial peace." *Foust, supra,* 442 U.S. at 47.

In light of the great pains the Court has taken to shape fair-representation law in a manner that balances competing interests and furthers the national labor policy, it necessarily follows that the rules that have been developed under the rubric of fair representation must be controlling in those § 301 suits which, like the instant case, *see* pp. 22-23, *supra,* concern the manner in which a union has gone about exercising its perogatives in invoking the grievance procedure of a collective bargaining agreement. To allow courts in such suits to deviate from fair-representation principles and develop and apply inconsistent rules of law—whether in the name of creating a federal common law of implied contractual obligations or of applying state law—"could undermine [the] careful accommodation" of individual and collective interests that the Court has struck in the fair representation context. *Foust, supra,* 442 U.S. at 50.

That is one of the lessons that *Vaca v. Sipes* teaches. *Vaca* arose out of the decision by a union not to appeal to arbitration a grievance over the plaintiff's discharge. Plaintiff filed what he termed in his brief to this Court "an uncomplicated action by a principal against his agent, under Missouri state law, for arbitrary and malicious failure to perform the agent's contractual duty." Br. for Resp. in No. 114 at 5. The Missouri courts upheld this claim, reasoning that so long as the "evidence supported [plaintiff's] assertion that he had been wrongfully discharged," the union was obligated under Missouri agency/contract law to prosecute a grievance over the discharge. This Court reversed the judgment that had been entered against the union, explaining:

> Although we conclude the state courts have jurisdiction in this type of case, we hold that federal law governs, that the governing federal standards were not applied here, and that the judgment of the Su-

> preme Court of Missouri must accordingly be reversed. [386 U.S. at 174.]

The Court elaborated on its holding as follows:

> It is now well-established that, as the exclusive bargaining representative of the employees in [plaintiff's] bargaining unit, the Union has a statutory duty fairly to represent all those employees. . . . It is obvious that [plaintiff's] complaint alleged a breach by the Union of a duty grounded in federal statutes, and that federal law therefore governs this cause of action. [*Id.* at 177.]

The teaching of *Vaca* for the instant case is clear: the federal duty of fair representation is the sole source of law for the courts to apply in judging a union's conduct in performing its functions as exclusive bargaining representative, including its function in enforcing collective bargaining agreements. Because, as we have seen, it is precisely the union's performance as bargaining representative that is at issue here, it necessarily follows that the fair-representation doctrine is fully applicable, notwithstanding the fact that, like the plaintiff in *Vaca*, respondent pleaded her complaint as a state-law claim.[12]

C. Applying the fair-representation doctrine, the district court properly dismissed respondent's complaint. As the district court recognized, under *DelCostello* the appli-

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[12] Indeed, for the reasons stated in text, and based on the authority of *Vaca*, even if respondent's claim did not rest on the terms of the collective bargaining agreement, that claim still would be preempted by the duty of fair representation. Simply stated, what *Vaca* holds is that the states are not free to apply their tort law to regulate a union's performance in administering collective bargaining agreements; the union's activities in that regard are governed by the federal duty of fair representation. *Cf. Howard v. Lyons*, 360 U.S. 593, 597 (1959) (question of whether federal office enjoys absolute privilege in state defamation proceeding with respect to official reports he prepared is a federal question because "[t]he authority of a federal office to act derives from federal sources" and "[n]o subject could be one of more peculiarly federal concern").

cable limitations period for a breach-of-duty claim is the six-months statute of limitations contained in § 10(b) of the NLRA, 29 U.S.C. § 160(b). That limitations period was held applicable to fair-representation claims in order to further that aspect of the national labor policy which favors the "relatively rapid final resolution of labor disputes." *DelCostello, supra*, 462 U.S. at 168. This policy would be fatally undermined if would-be plaintiffs could circumvent the limitations period of § 10(b) by artful pleading. Thus, as the district court properly concluded, respondent's complaint, which was filed more than two years after respondent was injured and which seeks redress for the union's alleged failure to enforce the collective bargaining agreement so as to protect the respondent from an unsafe assignment, is governed by, and is untimely under the limitations period of § 10(b).

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed and the case remanded with instruction to affirm the district court's dismissal.

Respectfully submitted,

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